International Union of Operating Engineers, Local #4, AFL-CIO[1] *and* **Truck Drivers' Union, Local #170 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and The Henley-Lundgren Company.** Case 1-CD-691

28 February 1984

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

The charge in this Section 10(k) proceeding was filed 29 April 1983[2] by Truck Drivers' Union, Local #170, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Teamsters), alleging that the Respondent, International Union of Operating Engineers, Local #4, AFL-CIO (Operating Engineers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer (The Henley-Lundgren Company) to assign certain work to employees represented by Operating Engineers rather than to employees represented by Teamsters. The hearing was held 20 June 1983 before Hearing Officer Benjamin Smith.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Company, a Massachusetts corporation with a place of business in Shrewsbury, Massachusetts, is engaged in the manufacture and supply of asphalt products and bituminous concrete and is also engaged in heavy and highway construction. It annually purchases products directly from outside the Commonwealth of Massachusetts having a value in excess of $50,000. The parties stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Operating Engineers and Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has collective-bargaining agreements with both Teamsters and Operating Engineers. In September 1982 the Employer obtained a crusher which was used to recycle asphalt and reduce the size of gravel. The Employer assigned employees represented by Teamsters to operate the crusher at its plantsite. Thereafter, the Employer was awarded work as a subcontractor at the Norwood Airport jobsite in Norwood, Massachusetts, by the general contractor on the site, J. H. Lynch Company (J. H. Lynch). In April or May 1983 an employee represented by Teamsters transported the crusher to the Norwood jobsite and was assigned to operate the crusher.

The Employer's president, Olson, testified that, during the first week of the crushing machine operation at the Norwood site, he heard from his superintendent, who, in turn, had heard from Myers, the superintendent of J. H. Lynch, about a remark allegedly made by Morrel, the Respondent's agent, to Myers. The alleged remark was that Operating Engineers believed its members should operate the crusher on off-plant jobsites and that Operating Engineers would engage in a work stoppage eventually if the work of operating the crusher was not reassigned. At the hearing, Morrel stated that he did have a phone conversation with Myers on 26 April concerning the operation of the crusher. Morrel testified that he told Myers that the general contractor was responsible for ensuring that the subcontractor lived up to the terms of its collective-bargaining agreement with Operating Engineers. Myers, according to Morrel, agreed to live up to the agreement. However, Morrel flatly denied making any threat that Operating Engineers would engage in a work stoppage if the work was not reassigned.

Morrel testified that he also reported the problem concerning the crusher to Operating Engineers business agent Ryan. Subsequently, on 28 April, Ryan told Olson, according to Olson, that the operation of the crusher was covered under Operating Engineers collective-bargaining agreement with the Employer and that the Employer had "better straighten the situation out." Olson promised to reassign the work on the crusher to an employee represented by Operating Engineers. There was no work stoppage and, on 2 May, an employee represented by Operating Engineers commenced operating the crusher and continued to operate the crusher without incident until completion of the crushing machine phase of the Norwood project on 17 June.

[1] Name appears as amended at the hearing.

[2] All dates herein refer to 1983 unless otherwise noted.

B. *Work in Dispute*

This proceeding arises out of a dispute concerning the Employer's operation of a crusher used in connection with the paving of a runway at the Norwood Airport jobsite in Norwood, Massachusetts.

C. *Contentions of the Parties*

Operating Engineers denies that it threatened the Employer and contends that no reasonable cause exists to believe it violated Section 8(b)(4)(D). In support of the latter contention, Operating Engineers argues that the only evidence of a threat made by Operating Engineers is a double hearsay statement. It also contends that, on the merits, the work in dispute should be awarded to employees represented by it based on its collective-bargaining agreement with the Employer, the area practice, and the present assignment of the work.

The Employer's position is that there is reasonable cause to believe that Operating Engineers engaged in conduct violative of Section 8(b)(4)(D). While it indicates that it has no preference regarding an award of the work, it argues that the factors of area practice and collective-bargaining agreements favor an award to employees represented by Operating Engineers.

Teamsters did not file a brief with the Board detailing its position. At the hearing, Teamsters indicated that reasonable cause exists to believe Section 8(b)(4)(D) has been violated and that employees it represents are entitled to the work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied, inter alia, that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. We are not satisfied that such reasonable cause exists.

In this case any finding that reasonable cause exists to believe that Section 8(b)(4)(D) has been violated must be predicated solely on the uncorroborated testimony of Employer President Olson that he heard from his superintendent, who, in turn, was told by the general contractor's superintendent, Myers, that Morrel had stated that Operating Engineers would eventually engage in a work stoppage unless operation of the crusher was reassigned to Operating Engineers. This alleged threat, by Morrel, established only by Olson's double hearsay statement, was denied by Morrel. Moreover, while the admitted comments of Operating Engineers officials Ryan and Morrel clearly indicate that Operating Engineers sought the work, those statements do not indicate that Operating Engineers intended doing so, or would do so, by means prohibited by Section 8(b)(4)(D). While conflicts in testimony do not prevent a finding of reasonable cause,[3] nonetheless the evidence offered must be sufficiently substantial to support a finding of reasonable cause.[4] Under the circumstances set out above, where the evidence to support such a finding is double hearsay, which is denied, we deem the record evidence too insubstantial to support the necessary finding that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred.[5] We therefore conclude that the Board is without authority to determine this dispute and shall quash the notice of hearing issued herein.[6]

ORDER

It is hereby ordered that the notice of hearing issued in this case is quashed.

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[3] *Painters Local 813 (Cincinnati Floor Co.)*, 261 NLRB 462 (1982).

[4] *Operating Engineers Local 106 (Northeastern Line Constructors Chapter, NECA)*, 137 NLRB 1746, 1752 (1962).

[5] *Bricklayers Local 1 (St. Louis Home Insulators)*, 209 NLRB 1072 (1974).

[6] In view of our determination that there is no reasonable cause to believe that the Respondent violated Sec. 8(b)(4)(D), we find it unnecessary to deal with the other contention of the parties.